

**NOT FOR PUBLICATION**

**SEP 28 2007**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID ZUNIGA-OSEGUEDA,

Defendant - Appellant.

No. 06-50171

D.C. No. CR-04-00112-VAP-01

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Virginia A. Phillips, District Judge, Presiding

Submitted September 24, 2007<sup>\*\*</sup>

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

David Zuniga-Osegueda appeals from his guilty-plea conviction and 70-month sentence for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326(a).

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Zuniga-Osegueda's counsel has filed a brief stating that there are no meritorious issues for review, and a motion to withdraw as counsel of record. Appellant has filed a pro se supplemental brief. Appellee has filed a motion to dismiss the appeal.

We have reviewed the brief and motions, and conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction, and dismiss the appeal of the sentence in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

Accordingly, we grant counsel's motion to withdraw, grant Appellee's motion to dismiss based on the valid appeal waiver, and deny all other pending motions.

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

Conviction **AFFIRMED**; Appeal of sentence **DISMISSED**; **REMANDED** with instructions to correct the judgment.